

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTOPHER ROBINSON,

Case No. 14-11987

Plaintiff,

Linda V. Parker

v.

United States District Judge

STEPHEN ANDREWS, *et al*,

Stephanie Dawkins Davis

United States Magistrate Judge

Defendants.

**REPORT AND RECOMMENDATION
FOR GRANTING OF PLAINTIFF'S VOLUNTARY MOTION TO
DISMISS DEFENDANT DAVID BEATY [DKT. 177]**

On May 19, 2014, plaintiff Christopher Robinson, an inmate incarcerated by the Michigan Department of Corrections and currently confined at the Carson City Correctional Facility in Carson City, Michigan, brought this action under 42 U.S.C. § 1983, claiming a violation of his rights under the Fourth, Eighth and Fourteenth Amendments of the United States Constitution. (Dkt. 1). On January 7, 2016, this case was referred to the undersigned by District Judge Linda V. Parker for all pretrial purposes. (Dkt. 151).

On September 15, 2016, plaintiff Christopher Robinson filed a voluntary motion to dismiss defendant David Beaty indicating that plaintiff had not exhausted his administrative grievances as to defendant Beaty as required by the Prison Litigation Reform Act. 42 U.S.C. § 1997e(a). (Dkt. 177, Pg ID 2365).

Plaintiff's motion was not docketed before the Court entered an order directing plaintiff to show cause why defendant Beaty should not be dismissed for failure to provide a correct address for service of defendant Beaty. (Dkt. 176). In light of plaintiff's motion to dismiss, the undersigned vacated the show cause order. (*See* Text-Only Order dated 9/21/16).

Federal Rule of Civil Procedure 41(a)(1) provides that "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(i), (ii). The Court has no discretion to deny a voluntary dismissal so long as notice of the dismissal is filed before an answer or motion for summary judgment is served. *Aamot v. Kassel*, 1 F.3d 441, 443 (6th Cir. 1993). Defendant Beaty has not filed an answer to the complaint or otherwise respond in this action. In fact, as noted above, defendant Beaty has not been properly served in this action because plaintiff has not provided the court with a proper address for Beaty. Accordingly, the court should conclude that plaintiff has voluntarily dismissed his suit without prejudice against defendant Beaty pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

As such the undersigned **RECOMMENDS** that plaintiff's motion for voluntary dismissal (Dkt. 177) be **GRANTED** and plaintiff's complaint be

dismissed without prejudice as to defendant Beaty.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as “Objection No. 1,” “Objection No. 2,” etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may

rule without awaiting the response.

Date: September 23, 2016

s/Stephanie Dawkins Davis

Stephanie Dawkins Davis

United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on September 23, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel of record and that I have mailed by United States Postal Service to the following non-ECF participant: Christopher Robinson #206760, Carson City Correctional Facility, 10274 Boyer Road, Carson City, MI 48811.

s/Tammy Hallwood

Case Manager

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